

**IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA**

Rebecca Keaton
Court Rule: www.cobbsuperiorcourtclerk.com
Rebecca Keaton
Clerk of Superior Court Cobb County

STATE OF GEORGIA,

v.

JUSTIN ROSS HARRIS,

Defendant.

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Indictment 14-9-3124

[Judge Staley]

DEFENDANT'S MOTION NO. 3

**MOTION TO SEVER UNRELATED AND IMPROPERLY
JOINED OFFENSES**

COMES NOW, Defendant, Justin Ross Harris, by and through counsel, and hereby moves to sever unrelated and improperly joined offenses, by showing and stating as follows:

1.

The instant 8-count indictment charges Defendant with malice murder, felony murder, and cruelty to children against the person of Cooper Harris on June 18, 2014. On its face, the indictment also improperly joins 3 unrelated counts of criminal attempt to commit sexual exploitation and dissemination of harmful material to minors against the person of Chelsea Doster on dates between March 1, 2014, and June 18, 2014.

2.

The offenses charged in counts one through five are not of a similar character or nature to the offenses charged in counts six through eight.

3.

Counts six through eight allege an altogether different victim and dates than alleged in counts one through five. Counts six through eight do not arise out of the same conduct alleged in counts one through five. The evidence in counts one through five, involving the alleged malicious or criminally negligent killing of a child would not be admissible in a trial on counts six through eight alleging attempted sexual exploitation and dissemination of harmful material to minors....and visa versa.

4.

“Where the separate crimes did not arise out of the same conduct, did not involve the same victims or witnesses and the evidence of one would not be admissible on the trial of the other, the judgment of the trial court overruling the motion to sever was error as constituting an abuse of discretion.” *Booker v. State*, 231 Ga. 598, 599 (1) (1974).

5.

The offenses alleged in counts one through five do not constitute the same conduct as counts six through eight, nor a series of connected acts with counts six through eight. Nor do counts one through five allege a series of acts constituting parts of a single scheme, plan or modus operandi with the counts alleged in counts six through eight.

6.

Defendant has the right to severance of improperly joined offenses under the standard promulgated by the American Bar Association:

Standard 13-3.1. Severance of offenses

(a) Whenever two or more unrelated offenses have been joined for trial, the prosecuting attorney or the defendant shall have a right to a severance of the offenses.

(b) The court, on the application of either the prosecuting attorney or the defendant, should grant a severance of related offenses:

(i) before trial, whenever severance is deemed appropriate to promote a fair determination of the defendant's guilt or innocence of each offense; or

(ii) during trial, whenever, upon the consent of the defendant or upon a finding of manifest necessity, severance is deemed necessary to achieve a fair determination of the defendant's guilt or innocence of each offense.

(c) When evaluating whether severance is “appropriate to promote” or “necessary to achieve” a fair determination of the defendant's guilt or innocence for each offense, the court should consider among other factors whether, in view of the number of offenses charged and the complexity of the evidence to be offered, the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense.

7.

The unrelated offenses alleged in counts six through eight are joined in the instant indictment for the improper purpose of interjecting evidence of bad character against Defendant.

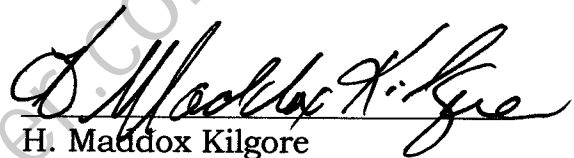
8.

Joinder of unrelated offenses in the instant case violates Defendant's right to due process of law and a fair trial under both the United States constitution and the Georgia constitution.

CONCLUSION

WHEREAS the instant indictment charges separate offenses which did not arise out of the same conduct, did not involve the same victims or witnesses and the evidence of one would not be admissible on the trial of the other, Defendant is entitled to severance of counts six through eight for trial.

Respectfully submitted, this 27th day of October, 2014.



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